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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,610	01/12/2006	Hans Josef Van Els	23313	2253
535 7590 01/06/2009 K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			EXAMINER	
			MANOHIRAN, VIRGINIA	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			01/06/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,610	<b>Applicant(s)</b> VAN ELS, HANS JOSEF
	<b>Examiner</b> Virginia Manoharan	<b>Art Unit</b> 1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 17 September 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 9 and 12-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14 and 15 is/are allowed.
- 6) Claim(s) 9,13 and 16-18 is/are rejected.
- 7) Claim(s) 12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,13 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger et al (5,582,690) in view of Markopoulos (6,165,326) or Corniel (6,027,607).

The above references are applied for the same combined reasons as set forth at the paragraph bridging pages 4 and 5 of the previous Office Action.

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14 and 15 are allowed.

The apparatus claims 16-18 do not patentably distinguished from the prior art in terms of "salt content" which is more process rather than apparatus to which the claims are directed. Incorporating the device 26 described at page 6, lines 10-24 of the specification would place the apparatus claims in condition for allowance.

Applicants' arguments filed September 17, 2008 have been fully considered but they are not persuasive.

Applicant's arguments such as : "Applicant has emphasized that the salt-containing water that passes through the basin in the heat exchanger is heated by indirect heat exchange with the solar-heated water contained in the basin, as well as the fact that the layers of brine in the basin that heat the salt containing water by indirect heat exchange have increased salt content over the layer of brine lying above....patently distinguish over the combination of prior art references.." are nor considered well-taken. However, the heat exchanger (6), for example, of Markopoulos shown in Fig. 3 as an indirect type of heat exchanger which is in heat -exchanged relationship with the seawater in the lower half of the tank (11); and further the thermal solar collector (2) which heats the transfer medium which releases heat to be further cooled in (6) by the seawater, noting col. 3, lines 10-30, would at least be suggestive of the above argued indirect heat exchange with the solar- heated water. Moreover, the further argued "the layers of brine in the basin that heat the salt containing water by indirect heat exchange have increased salt content over the layer of brine lying above" is obvious, not unobvious. An artisan knows that as evaporation progresses, the feed water will be enriched with salt and will be formed on the base or lower part of the basin. This is evident e.g., from Markopoulos disclosure at col. 3, lines 45-53. Note further Weinberger's disclosure at col. 3, lines 18-46, rendering obvious the concept of a downwardly increasing salt concentration and downwardly increased temperature profile, i.e., density gradient and temperature increases in the downward direction. Thus, the argued "increased salt content over the layer

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of brine lying above" is not an unobvious subject matter nor is it evidence of criticality in the art as taught, *supra*.

In the absence of anything which may be "new" or "unexpected result," a *prima facie* case of obviousness has been reasonably established by the art and has not been rebutted. Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicants' amendments, or the Brief do not suffice. *In re Linder*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1872). *In re Wood*, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-272-1450.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Calderola, can be reached on 571-272-1444.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Virginia Manoharan/

Primary Examiner, Art Unit 1797